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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/565,395	07/05/2006	Włodzimirz Rutynowski	541114-0325045(POL.0010-US	1920
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PAUL, HASTINGS, JANOFSKY & WALKER LLP				
875 15th Street, NW				
Washington, DC 20005				
EXAMINER				
HUANG, LIAN				
ART UNIT		PAPER NUMBER		
3731				
MAIL DATE		DELIVERY MODE		
04/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/565,395

**Applicant(s)**

RUTYNOWSKI, WLODZIMIERZ

**Examiner**

LIAN HUANG

**Art Unit**

3731

***--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --***

THE REPLY FILED 09 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: 8-19.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 1/23/06  
13. ☐ Other: \_\_\_\_\_.

/Anhtuan T. Nguyen/  
Supervisory Patent Examiner, Art Unit 3731

/L. H./  
Examiner, Art Unit 3731

Continuation of 11. does NOT place the application in condition for allowance because: Regarding applicant's arguments concerning claims 8, 9, 17, and 18, where applicant asserts that the prior art fails to teach the side jut disposed between the return spring and driving spring, the side juts 354 of Thorne et al. are between said springs in terms of axial placement. They are radially between the two said springs. As for The references not teaching the return spring acting against the side jut, Thorne, Jr. et al. teach the spring 420 exerting force against the hub 352 on which the side juts 354 are disposed column 10, lines 34-43, (thereby acting against the side juts in a direction opposite the driving direction). The fact that the driving spring returns the blade to the inside of the housing does not prevent the teachings of Thorne, Jr. et al. from anticipating the limitations of the claim. In terms of "return" being a positive structural recitation, parts 420 and 430 naturally return the blade to a proper alignment inside the housing given their placement (figures 19 and 20). Czernecki is used as a teaching reference for the modification of giving the needle breakable wings. Thorne, Jr. et al. fulfill the limitations of teaching a return spring acting against a side jut.

In reply to arguments that there is no motivation to combine Thorne, Jr. et al. and Czernecki, the different operating principle of Thorne, Jr. et al. does not prevent the device from being single-use. It would be obvious to one of ordinary skill in the art at the time of the invention to have the device be single-use as taught by Czernecki since such a modification greatly reduces the risk of accidental puncture and transmitting disease (column 1, lines 60-67, Czernecki).

For claim 13, "separate" is taken to mean "to space apart" and figure 19 displays the position of the needle after use. The second end of the driving spring is more spaced apart from the needles after deployment than before deployment.

In response to applicant's arguments concerning claim 14, it would have been obvious to one of ordinary skill in the art at the time of the invention to make the pusher and needle separate since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPQ 177, 179. As for the cup-shaped end with a corresponding projection, fixtures and fasteners with complementary surfaces are well-known in the art.

Claim 19 states that the arms need only be integral to the push button, and applicant agrees that the arms are integral after the driving spring is compressed. It has been set forth in the office action that "integral" is sufficiently broad to embrace constructions united by such means as fastening. In re Hotte, 177 USPQ 326, 328 (CCPA 1973). Given this broad definition of "integral," a drastically different construction would not be required for Thorne, Jr. et al. to anticipate the claim. The current claim language is insufficient to overcome the teachings of Thorne, Jr. et al.

Acknowledgement of consideration for the International Search Report has been added to the enclosed Information Disclosure Citation form.